

2007 WL 5787157 (Miss.Cir.) (Trial Pleading)  
Circuit Court of Mississippi.  
Lafayette County

The Estate of Ardelua JOHNSON, by and through Allie Shaw, Individually and as Executrix of the Estate of Ardelua Johnson. and for the use and benefit of the wrongful death beneficiaries of Ardelua Johnson, Plaintiff,

v.

GRACELAND CARE CENTER OF OXFORD LLC, Graceland Management Company, Inc., Graceland Holdings, LP, Gracelands Inc., Lafayette LTC, Inc., Katie M. Overstreet Qtip Trust, Katie M. Overstreet Trust, Larry Overstreet, John B. ("Ley") Falkner, Mary Wilson, Unidentified Entities 1 through 10 and John Does 1 through 10 (as to Graceland Care Center-Oxford ), Defendants.

No. L06-347.  
January 4, 2007.

Jury Trial Demanded

**Complaint**

Respectfully submitted, The Estate of Ardelua Johnson, by and through Allie Shaw, Individually and as Executrix of the Estate of Ardelua Johnson. and for the use and benefit of the wrongful death beneficiaries of Ardelua Johnson, [D. Bryant Chaffin](#), Mississippi Bar No. 100379, Wilkes & McHugh, P.A., P. O. Box 17107, Hattiesburg, MS 39404, Telephone: 601-545-7363, Facsimile: 601-545-7364, Attorneys for Plaintiff.

Plaintiff, the Estate of Ardelua Johnson, by and through Allie Shaw, Individually and as Executrix of the Estate of Ardelua Johnson, and on behalf of and for the use and benefit of the wrongful death beneficiaries of Ardelua Johnson, and for her cause of action against Defendants, states:

***JURISDICTIONAL STATEMENT***

1. Allie Shaw, the daughter of Ardelua Johnson, brings her action individually and as Executrix of the Estate of Ardelua Johnson, deceased, and on the behalf of the wrongful death beneficiaries of Ardelua Johnson pursuant to Mississippi law.
2. Ardelua Johnson, was at a resident of Graceland Care Center-Oxford, a skilled nursing facility located at 1301 Belk Boulevard, Oxford, Lafayette County, Mississippi from September 1, 2001 until June 8, 2004, and suffered per?? injuries and damages while a resident there.
3. Separate Defendant GRACELAND CARE CENTER OF OXFORD, LLC, is a Mississippi limited liability company with its principal place of business at 1301 Belk Boulevard, Oxford, MS 38655. The agent for service for GRACELAND CARE CENTER OF OXFORD, LLC is Graceland Management Company, Inc., 1303 Belk Boulevard, Oxford, MS 38655. GRACELAND CARE CENTER OF OXFORD, LLC was and remains a limited liability company engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at GRACELAND CARE CENTER OF OXFORD in Oxford, Lafayette County, Mississippi.
4. Separate Defendant GRACELAND HOLDINGS, L.P., is a Mississippi limited partnership with its principal place of business at 1303 Belk Boulevard, Oxford, MS 38655. Graceland Management Company, Inc. is the agent for service of GRACELAND HOLDINGS, L.P. GRACELAND HOLDINGS, L.P. was and remains a limited partnership engaged in the custodial care of

**elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at GRACELAND CARE CENTER OF OXFORD in Oxford, Lafayette County, Mississippi.

5. Separate Defendant KATIE M. OVERSTREET QTIP TRUST, is a Mississippi trust with its principal place of business at 1303 Belk Boulevard, Oxford, MS 38655. The agent for service for KATIE M. OVERSTREET QTIP TRUST is Graceland Management Company, Inc., 1303 Belk Boulevard, Oxford, MS 38655. KATIE M. OVERSTREET QTIP TRUST was and remains a trust engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at GRACELAND CARE CENTER OF OXFORD in Oxford, Lafayette County, Mississippi.

6. Separate Defendant KATIE M. OVERSTREET TRUST, is a Mississippi trust with its principal place of business at 1303 Belk Boulevard, Oxford, MS 38655. The agent for service for KATIE M. OVERSTREET TRUST is Graceland Management Company, Inc., 1303 Belk Boulevard, Oxford, MS 38655. KATIE M. OVERSTREET TRUST was and remains a trust engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at GRACELAND CARE CENTER OF OXFORD in Oxford, Lafayette County, Mississippi.

7. Separate Defendant GRACELAND MANAGEMENT COMPANY, INC., is a Mississippi corporation with its principal place of business at 1303 Belk Boulevard, Oxford, MS 38655. The agent for service for GRACELAND MANAGEMENT COMPANY, INC. is W. Larry Overstreet, 1212 Adams Ave., Oxford, MS 38655. GRACELAND MANAGEMENT COMPANY, INC. was and remains a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at GRACELAND CARE CENTER OF OXFORD in Oxford, Lafayette County, Mississippi.

8. Separate Defendant GRACELANDS, INC., is a Mississippi corporation with its principal place of business at 1300 Belk Street, Oxford, MS 38655. The agent for service for GRACELANDS, INC. is Graceland Management Company, Inc., 1303 Belk Boulevard, Oxford, MS 38655. GRACELANDS, INC. was and remains a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at GRACELAND CARE CENTER OF OXFORD in Oxford, Lafayette County, Mississippi.

9. Separate Defendant LAFAYETTE LTC, INC., is a Mississippi corporation with its principal place of business at P.O. Box 1490, Magee, MS, 39111. The agent for service for LAFAYETTE LTC, INC. is Thomas Kirkland, 1062 Highland Colony Pkwy., P.O. Box 6020, Ridgeland, MS, 39158. LAFAYETTE LTC, INC. was and remains a corporation engaged in the custodial care of **elderly**, helpless individuals who are chronically infirm, mentally impaired, and/or in need of nursing care and treatment at GRACELAND CARE CENTER OF OXFORD in Oxford, Lafayette County, Mississippi.

10. Separate Defendant LARRY OVERSTREET, on information and belief, was at all times material hereto the licensee of GRACELAND CARE CENTER OF OXFORD. LARRY OVERSTREET is a resident citizen of the State of Mississippi.

11. Separate Defendant JOHN B. ("LEY") FALKNER, on information and belief, was the nursing home administrator for GRACELAND CARE CENTER OF OXFORD, on or about the dates of the occurrences which made the basis of her lawsuit and is a resident citizen of the State of Mississippi.

12. Separate Defendant MARY WILSON, on information and belief, was the nursing home administrator for GRACELAND CARE CENTER OF OXFORD, on or about the dates of the occurrences which made the basis of her lawsuit and is a resident citizen of the State of Mississippi.

13. Separate Defendants John Does 1 through 10 are individuals whom Plaintiff is currently unable to identify despite diligent efforts. Said Defendants are named pursuant to Miss. R. Civ. P. 9(h), insofar as their acts and/or omissions were negligent and/or otherwise tortious with respect to the care and treatment of Ardelua Johnson, or in the staffing, supervision, administration and

direction of the care and treatment of, Ardelua Johnson during her residency at Graceland Care Center of Oxford. Alternatively, Defendants are liable for the negligent and/or otherwise tortious acts and/or omissions of others with respect to the care and treatment of Ardelua Johnson during her residency at Graceland Care Center-Oxford.

14. Separate Defendants Unidentified Entities 1 through 10 are entities whom Plaintiff is currently unable to identify despite diligent efforts. Defendants are named pursuant to [Miss. R. Civ. P. 9\(h\)](#), insofar as their acts and/or omissions were negligent and/or otherwise tortious with respect to the care and treatment of Ardelua Johnson during her residency at Graceland Care Center-Oxford. Alternatively, Defendants are liable for the negligent and/or otherwise tortious acts and/or omissions of others with respect to the care and treatment of Ardelua Johnson during her residency at Graceland Care Center-Oxford

15. At all times material hereto, Separate Defendants owned, operated and/or controlled Graceland Care Center-Oxford. The actions of each of Graceland Care Center-Oxford servants, agents and employees as set forth herein, are imputed to Defendants.

16. Jurisdiction of the Court is proper in the Circuit Court of Lafayette County in that the amount in controversy, exclusive of interest and costs, exceeds the minimum jurisdictional limits of the Court.

### ***FACTUAL SUMMARY***

17. On or about September 1, 2001, Ardelua Johnson was admitted to Graceland Care Center-Oxford, and she remained a resident of the nursing home until June 8, 2004. On July 16, 2004, Ms. Johnson died at Baptist Memorial Hospital-Oxford as a result of the injuries she suffered at Defendants' facility.

18. As of September 1, 2001, Ardelua Johnson was no longer competent to handle her own affairs, due to senile dementia, and her cognitive skills were impaired. She no longer had the conscious awareness necessary to be able to fully comprehend all of the elements necessary to know that he/she had been the victim of nursing home negligence and resident rights violations.

19. Separate Defendants were aware of Ardelua Johnson's medical condition and the care that she required when they represented that they could adequately care for her needs.

20. At all relevant times, Separate Defendants held themselves out as being:

- a. Skilled in the performance of nursing, rehabilitative and other medical support services;
- b. Properly staffed, supervised, and equipped to meet the total needs of their nursing home residents;
- c. Able to specifically meet the total nursing home, medical, and physical therapy needs of Ardelua Johnson and other residents like her and,
- d. Licensed and complying on a continual basis with all rules, regulations, and standards established for nursing homes, nursing home licensees and nursing home administrators.

21. Separate Defendants failed to discharge their obligations of care to Ardelua Johnson. As a consequence thereof, Ardelua Johnson suffered catastrophic injuries, extreme pain and suffering, mental anguish, and death. The scope and severity of the recurrent wrongs inflicted upon Ardelua Johnson while under the care of Defendants' facilities accelerated the deterioration of her health and physical condition beyond that caused by the normal aging process and resulted in physical and emotional trauma, which includes, but is not limited to:

- a. Multiple decubitus wounds (pressure sores);
- b. Weight loss;

c. Conjunctivitis with preorbital edema (eye infection);

d. Chronic constipation;

e. Surgical debridement;

f. Gangrene;

g. Upper respiratory infections;

h. Urinary tract infections;

i. Chronic Yeast Infections;

j. Multiple infections with MRSA;

k. Malnutrition;

l. Dehydration;

m. Poorly regulated Coumadin therapy;

n. Disfigurement;

o. Poor hygiene; and

p. Death

22. All of the above identified injuries, as well as the conduct specified below, caused Ardelua Johnson to lose her personal dignity and her death to be preceded by extreme and unnecessary pain, degradation, anguish, and emotional trauma.

23. The wrongs complained of herein were of a continuing nature, and occurred throughout Ardelua Johnson's stays at Defendants' facilities.

24. Plaintiff alleges that on all of the occasions complained of herein, Ardelua Johnson was under the care, supervision, and treatment of the agents and/or employees of Separate Defendants and that the injuries complained of herein were proximately caused by the acts and omissions of Separate Defendants named herein.

25. Separate Defendants had vicarious liability for the acts and omissions of all persons or entities under Separate Defendants' control, either directly or indirectly, including their employees, agents, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies, or pools causing or contributing to the injuries of Ardelua Johnson

26. Separate Defendants have joint and several liability for the actions complained of herein because they consciously and deliberately pursued a common plan or design to commit the tortious acts described in the Complaint and these Separate Defendants actively took part in such actions.

***COUNT ONE: NEGLIGENCE AGAINST SEPARATE DEFENDANTS GRACELAND CARE CENTER OF OXFORD LLC, GRACELAND MANAGEMENT COMPANY, INC., GRACELAND HOLDINGS LP, GRACELANDS INC., LAFAYETTE LTC, INC KATIE M. OVERSTREET QTIP TRUST, KATIE M. OVERSTREET TRUST, AND UNIDENTIFIED ENTITIES 1 THROUGH 10***

27. Plaintiff re-alleges and incorporates the allegations in paragraphs 1-25 as if set forth herein.

28. Separate Defendants owed a duty to residents, including Ardelua Johnson, to provide adequate and appropriate custodial care and supervision, which a reasonably careful person would provide under similar circumstances.

29. Separate Defendants owed a duty to residents, including Ardelua Johnson, to exercise reasonable care in providing care and services in a safe and beneficial manner.

30. Separate Defendants breached their duty by failing to deliver care and services that a reasonably careful person would have provided under similar circumstances and by failing to prevent the mistreatment, **abuse** and neglect of Ardelua Johnson

31. The negligence of Separate Defendants, their employees, agents and consultants, includes, but is not limited to the following acts and omissions:

a. The failure to provide Ardelua Johnson with adequate and appropriate hygiene care, including the failure to bathe her daily after each incontinent episode so as to prevent urine and fecal contact with her skin for an extended period of time;

b. The failure to feed Ardelua Johnson to prevent malnutrition and weight loss;

c. The failure to provide sufficient amounts of water to Ardelua Johnson to prevent recurrent and continual dehydration throughout her residency;

d. The failure to provide adequate turning and repositioning of Ardelua Johnson in order to provide pressure relief so as to prevent the formation of pressure sores on her body;

e. The failure to provide even the minimum number of staff necessary to assist the residents, including Ardelua Johnson, with their needs;

f. The failure to provide adequate supervision for Ardelua Johnson to protect her from unexplained injury within the facility;

g. The failure to provide sufficient numbers of qualified nursing personnel to meet the total needs of Ardelua Johnson;

h. The failure to increase the number of nursing personnel to ensure that Ardelua Johnson:

1. Received timely and accurate care assessments;

2. Received prescribed treatment, medication, and diet.

3. Received necessary supervision; and

4. Received timely nursing and medical intervention due to a significant change in condition.

i. The failure to provide nursing personnel sufficient in number to ensure that Ardelua Johnson attained and maintained her highest practicable level of physical, mental and psychosocial well-being;

j. The failure to provide adequate supervision to the nursing staff so as to ensure that Ardelua Johnson received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments and medications, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Ardelua Johnson;

k. The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure that Ardelua Johnson received appropriate nursing care, in accordance with Defendants' policies and procedures manual, and the statutorily mandated regulations implemented by the Mississippi Department of Health and its agents, including the Office of Licensing and Certification;

l. The failure to provide a nursing staff that was properly staffed, qualified, and trained;

m. The failure to adopt adequate guidelines; policies and procedures for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees - irrespective of whether such complaint derived from

a state survey agency, a resident of the facility, an employee of the facility or any interested person

n. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;

o. The failure to provide care, treatment, and medication in accordance with physician's orders;

p. The failure to provide a safe environment;

q. The failure to maintain medical records on Ardelua Johnson in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:

1. The diagnosis of Ardelua Johnson;

2. The treatment of Ardelua Johnson; and

3. The assessment and establishment of appropriate care plans of care and treatment; and

r. The failure to protect Ardelua Johnson from harm within the facility;

32. A reasonably careful nursing home operating under similar circumstances would foresee that the failure to provide the ordinary care listed above would result in devastating injuries to Ardelua Johnson

33. As a direct and proximate result of the negligence of Separate Defendants as set out above, Ardelua Johnson suffered injuries, as set forth herein all of which required hospitalization and medical treatment, and all of which required Ms. Johnson to incur significant hospital and medical expenses.

34. WHEREFORE, based on such conduct of Separate Defendants as set forth above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Separate Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, disfigurement and death in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

***COUNT TWO: NEGLIGENCE CLAIM AGAINST DEFENDANTS LAFAYETTE  
LTC, INC.. LARRY OVERSTREET AND JOHN DOES 1 THROUGH 10***

35. Plaintiff hereby re-alleges and incorporates the allegations in paragraphs 1-33 as if fully set forth herein.

36. Separate Defendants Lafayette LTC, Inc., Larry Overstreet, and John Does 1 through 10 were the licensees of Graceland Care Center-Oxford during the residency of Ardelua Johnson. By becoming licensees, Separate Defendants willingly and voluntarily assumed the ultimate responsibility to operate Graceland Care Center-Oxford in a manner that would ensure that each resident, including Ardelua Johnson, met her highest practicable physical, mental and psychosocial well-being.

37. As licensees of Graceland Care Center-Oxford, Separate Defendants were responsible to ensure that the operation of the facility was in compliance with state and federal statutes and regulations.

38. As licensees of Graceland Care Center-Oxford, Separate Defendants had a non-delegable duty to ensure that the residents of Graceland Care Center-Oxford including Ardelua Johnson, received adequate and appropriate care that a reasonable person would provide under similar circumstances.

39. As licensees of Graceland Care Center-Oxford, Separate Defendants were required to be aware of matters occurring at the nursing home and to take affirmative steps to correct problems, particularly when those problems could reasonably cause or contribute to an injury to a resident of the facility.

40. As licensees of Graceland Care Center-Oxford, Separate Defendants are vicariously liable for the acts and omissions of all persons or entities under their control.

41. Separate Defendants failed to supervise Graceland Care Center-Oxford in the manner in which a reasonably prudent person similarly situated would and failed to take steps to ensure that the residents of Graceland Care Center-Oxford, including Ms. Johnson, were receiving adequate and appropriate care. The negligence of Separate Defendants includes, but is not limited to the following acts and omissions:

- a. The failure to timely and adequately review records related to the operation of Graceland Care Center-Oxford in order to ensure that the residents, including Ardelua Johnson, received adequate and appropriate care.
- b. The failure to ensure that the facility had sufficient numbers of qualified nursing personnel. Such failures resulted in injuries to Ardelua Johnson, and include but are not limited to the following:
  1. The failure to give Ardelua Johnson a sufficient amount of water to prevent dehydration;
  2. The failure to feed Ardelua Johnson to prevent malnutrition and weight loss;
  3. The failure to provide Ardelua Johnson with necessary and adequate continence care and assistance with toileting;
  4. The failure to provide Ardelua Johnson with adequate and appropriate hygiene care, including the failure to bathe her daily after each incontinent episode so as to prevent urine and fecal contact with her skin for an extended period of time, thereby preventing pressure sores from developing and progressing;
  5. The failure to provide and ensure that Ardelua Johnson received adequate hygiene and sanitary care to prevent pressure sores from developing and progressing;
  6. The failure to provide clean bed linens to Ardelua Johnson as needed to prevent urine and fecal contact for an extended period of time,



7. The failure to provide adequate turning and repositioning of Ardelua Johnson in order to provide pressure relief so as to prevent the formation of pressure sores on her body;
8. The failure to provide the minimum number of staff necessary to assist the residents with their needs;
9. The failure to maintain appropriate records, including the failure to monitor and document significant changes in Ardelua Johnson's condition;
10. The failure to protect Ardelua Johnson from receiving unexplained injuries;
11. The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Ardelua Johnson;
12. The failure to increase the number of personnel to ensure that Ardelua Johnson:
  - I. Received timely and accurate care assessments;
  - II. Received prescribed treatment, medication, and diet;
  - III. Received necessary supervision; and
  - IV. Received timely intervention due to a significant change in condition.
13. The failure to provide nursing personnel sufficient in number to ensure that Ardelua Johnson attained and maintained her highest level of physical, mental and psychosocial well-being;
14. The failure to provide adequate supervision to the nursing staff so as to ensure that Ardelua Johnson received adequate and proper nutrition, fluids, therapeutic diet, sanitary care treatments and medications, and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Ms. Johnson;
15. The failure to adequately assess, evaluate and supervise nursing personnel so as to ensure that Ardelua Johnson received appropriate nursing care, in accordance with Defendants' policies and procedures, and the statutorily mandated regulations implemented by the Mississippi Department of Health and its agents, including the Division of Health Facilities Licensure and Certification;
16. The failure to provide a nursing staff that was properly staffed, qualified, and trained;
17. The failure to provide and ensure an adequate nursing care plan based on the needs of Ardelua Johnson;
18. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Ardelua Johnson changed;
19. The failure to adopt adequate guidelines; policies and procedures for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees - irrespective of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person;
20. The failure to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care;



21. The failure to properly and timely notify Ardelua Johnson's attending physician significant changes in Ms. Johnson's physical condition, specifically: Multiple decubitus wounds (pressure sores); Weight loss; Conjunctivitis with preorbital edema (eye infection); Chronic constipation; Surgical debridement; Gangrene; Upper respiratory infections; Urinary tract infections; Chronic Yeast Infections; Multiple infections with MRSA; Malnutrition; Dehydration; Poorly regulated Coumadin therapy; Disfigurement; Poor hygiene; and persistent, unresolved problems relating to the care and physical condition of Ardelua Johnson resulting in her unnecessary pain, agony, and suffering;

22. The failure to provide a safe environment;

23. The failure to maintain medical records on Ardelua Johnson in accordance with accepted professional standards and practices that are complete, accurately documented, readily accessible, and systematically organized with respect to:

I. The diagnosis of Ardelua Johnson;

II. The treatment of Ardelua Johnson; and

III. The assessment and establishment of appropriate care plans of care and treatment.

24. The failure to provide Ardelua Johnson with adequate and appropriate wound care, including timely dressing changes, so as to prevent the aggravation and deterioration of pressure sores on her body; and

25. The failure to provide Ardelua Johnson with adequate and appropriate observation and examination for skin breakdown so as to timely and adequately intervene to prevent the formation of pressure sores on her body.

42. A reasonably careful nursing home licensee, operating under similar circumstances, would foresee that the failure to provide the ordinary care listed above would result in devastating injuries to Ardelua Johnson

43. As a direct and proximate result of the negligence of Separate Defendants as set forth above, Ardelua Johnson suffered injuries as set forth herein.

44. WHEREFORE, based on the conduct of Separate Defendants as set forth above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Separate Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, disfigurement and death in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

***COUNT THREE: NEGLIGENCE CLAIM AGAINST SEPARATE DEFENDANTS  
JOHN B. ("LEY") FALKNER, MARY WILSON, AND JOHN DOES 1 THROUGH 10***

45. Plaintiff incorporates the allegations in paragraphs 1-43 as if set forth herein.

46. Upon information and belief, Separate Defendants John B. ("Ley") Falkner, Mary Wilson, and John Does 1 through 10 were the administrators of Graceland Care Center-Oxford during the residency of Ardelua Johnson. To the extent the names of the licensed administrators who may have managed their facility during the residency of Ms. Johnson are determined, all of the following acts are properly attributed to them and Plaintiff will seek leave to substitute these individuals as proper party Defendants.

47. As nursing home administrators, Separate Defendants owed a common law duty to act as reasonably prudent nursing home administrators and to prevent all reasonably foreseeable injuries to the residents of Graceland Care Center-Oxford.

48. As nursing home administrators, Separate Defendants owed a common law duty to remain informed as to events occurring at Graceland Care Center-Oxford through contact with the various departments that they managed, including, but not limited to, nursing, dietary, therapy, housekeeping, social services, and maintenance. Separate Defendants were required under law to be aware of matters occurring at the nursing home and to take affirmative steps to correct problems, particularly when those problems could reasonably cause or contribute to an injury, **abuse** or neglect to residents of the home.

49. When Separate Defendants accepted the position of administrator of Graceland Care Center-Oxford they assumed the duties as set forth in the preceding paragraphs.

50. It is reasonably foreseeable that injuries, **abuse** and neglect to residents of Graceland Care Center-Oxford, including Ardelua Johnson, would occur as a direct result of Separate Defendants' failures to carry out their duties as administrators of the facility.

51. As nursing home administrators, Separate Defendants were centrally involved and actively participated in tortious conduct that directly caused or contributed to the injuries of Ardelua Johnson. The following areas describe with specificity the wrongdoings of Separate Defendants that resulted in harm to Ms. Johnson:

a. Staffing

1. Nursing home residents, including Ardelua Johnson, often are unable to care for themselves; thus, they rely on nursing home staff to provide many, if not all, of their activities of daily living (ADL's). Nursing facilities have a common law duty, as well as a statutory duty, to have sufficient nursing staff to provide for the needs of their residents.

2. The administrator is responsible and required to hire and maintain sufficient staff to ensure that these residents' needs are met. Further, the administrator must establish and maintain proper working relationships with physicians, nurse practitioners, and employees of the facility.

3. When the administrator, as here, fails to hire and maintain sufficient staff and fails to maintain proper working relationships between the departments of the facility, the residents do not receive adequate and appropriate care.

4. Additionally, when the administrator fails to hire and maintain sufficient staff, the staff who are present are unable to meet the total needs of the residents through no fault of their own.

5. When the administrator fails to hire and maintain sufficient staff, those who are present must take shortcuts with respect to the care provided and are unable to provide adequate and appropriate care to the residents of the facility.

6. Rather than hiring and maintaining sufficient staff Separate Defendants hired too few registered nurses, too few LPNs, and too few certified nurse assistants. More importantly, too many of these staff members skipped work or terminated their employment because they did not have enough co-workers to properly care for the residents who depended upon them, or because of deplorable working conditions, or because the pay set by the nursing home with the input of the administrator was too low, or such other reasons as will be proven at trial of the matter.

7. Separate Defendants failed to develop and maintain proper working relationships between physicians, nurse practitioners and employees of the facility, and between the various departments they managed. Ardelua Johnson was injured through their failure to manage these individuals and departments in a way that they could fluidly and seamlessly work together.

8. Due to staff shortages at Graceland Care Center-Oxford, Ardelua Johnson's medical records were not kept and maintained in accordance with accepted professional standards and practices. The incomplete documentation resulted in further injuries to Ms. Johnson-the facility was unable to properly understand her condition, changes that occurred in her condition, and whether or not her care plan and dietary assessments were properly modified to address changes in her condition.

9. Separate Defendants owed a non-delegable duty to Ardelua Johnson and other residents of Graceland Care Center-Oxford, during their tenure as administrators, to ensure adequate and appropriate custodial care and supervision through their control over staffing issues. A reasonably prudent nursing home administrator would have known or should have known that injuries would occur to residents such as Ardelua Johnson if staffing levels were not maintained within reasonable parameters.

10. With respect to staffing, the failures of Separate Defendants include but are not limited to:

I. Ensuring that the staff provided Ardelua Johnson adequate nutrition to prevent malnutrition and weight loss;

II. Ensuring that the staff provided Ardelua Johnson with adequate fluids in order to prevent dehydration;

III. Ensuring that the staff provided Ardelua Johnson adequate hygiene and sanitary care;

IV. Ensuring that the staff provided Ardelua Johnson clean bed linens to prevent urine and fecal contact for extended periods of time;

V. Providing sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and medication aides (nursing personnel) to meet the total needs of Ardelua Johnson throughout her residency;

VI. Ensuring that Ardelua Johnson:

a. Received timely and accurate care assessments;

b. Received prescribed treatment, medication and diet; and

c. Was protected from accidental or intentional injuries by the correct use of ordered and reasonable safety measures and proper supervision of staff and other residents;

VII. Keeping Ardelua Johnson clean and comfortable and to prevent the formation of bedsores, ulcers and lesions on her body;

VIII. Providing a safe environment free from preventable **abuse** and neglect;

IX. Ensuring that Ardelua Johnson received care, treatment and medication in accordance with physician's orders;

X. Ensuring that Ardelua Johnson was provided with the dignity and respect that all nursing home residents are entitled to receive;

XI. Providing adequate supervision to the nursing staff to ensure that Ardelua Johnson received adequate and proper sanitary care, medications, repositioning, turning and skin care to prevent the formation of bedsores, ulcers and lesions;

XII. Adequately screen, evaluate and check references, test for competence, and use ordinary care in selecting nursing personnel to work at Graceland Care Center-Oxford;

XIII. Terminating employees at Graceland Care Center-Oxford assigned to Ardelua Johnson that were known (or should have been known) to be careless, incompetent and unwilling to comply with the policy and procedures of the facility and the rules and regulations promulgated and adopted by the Mississippi Department of Health;

XIV. Assigning nursing personnel at Graceland Care Center-Oxford consistent with their education and experience and based on:

- a. Ardelua Johnson's medical history and condition, nursing and rehabilitative needs;
- b. The characteristics of the resident population residing in the area of the facility where Ardelua Johnson was a resident; and
- c. Nursing skills needed to provide care to such resident population.

11. Separate Defendants failed to implement adequate guidelines, policies and procedures for:

I. Investigating the relevant facts, underlying deficiencies, or licensure violations or penalties found to exist at Graceland Care Center-Oxford by the Mississippi Department of Health or any state or federal survey agency;

II. Determining the cause of any such deficiencies, violations or penalties; and

III. Correcting deficiencies or licensure violations or penalties found to exist at Graceland Care Center-Oxford.

12. Adopting adequate guidelines, policies, and procedures for determining whether Graceland Care Center-Oxford had sufficient numbers of nursing personnel to:

I. Provide 24-hour nursing services;

II. Meet the needs of residents who reside at the facility, including Ardelua Johnson; and

III. Meet the total nursing needs of residents, including their activities of daily living.

13. Separate Defendants failed to adopt adequate guidelines, policies, and procedures of Graceland Care Center-Oxford for documenting; maintaining files; investigating and responding to any complaint regarding the quality of resident care or misconduct by employees at Graceland Care Center-Oxford regardless of whether such complaint derived from a state survey agency, a resident of the facility, an employee of the facility or any interested person. Their failure resulted in injury, **abuse** and neglect to residents of the facility, including Ardelua Johnson

14. Separate Defendants failed to take reasonable steps to prevent, eliminate, and correct deficiencies and problems in resident care at Graceland Care Center-Oxford.

15. Separate Defendants failed to ensure that Ardelua Johnson attained and maintained her highest level of physical, mental and psychosocial well-being, and the breach of other of their non-delegable duties regarding staffing directly caused damages to Ardelua Johnson

b. Budgeting or Allocation of Resources

1. As administrators, Separate Defendants were responsible for providing accurate information regarding the monetary needs of the facility to the owners of the nursing home so that a workable budget could be set.

2. As administrators, Separate Defendants were required to administer Graceland Care Center-Oxford in a manner that enabled it to use resources effectively and efficiently to attain or maintain the highest practicable physical, mental and psychosocial wellbeing of each resident.

3. As administrators, Separate Defendants were responsible for allocating funds within the budget provided them by the owners of the nursing home in a manner that ensured that the needs of the residents, including Ardelua Johnson, were met.

4. Separate Defendants failed to properly report the budgetary needs of the facility and to properly allocate the funds budgeted to the facility for the proper care of its residents, resulting in the following:

I. Staffing levels that were insufficient to attain or maintain the highest practicable physical, mental and psychosocial well-being of each residents, including Ardelua Johnson, and

II. Shortages of supplies and food necessary to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, including Ardelua Johnson

5. Upon information and belief, Plaintiff alleges that rather than properly allocating the budgeted funds, Separate Defendants inappropriately allocated or allowed funds to be paid to management companies that did not assist or even participate in managing the care provided to the residents. Rather, Separate Defendants only enhanced the profits of the home, allocated funds to employees whose only duties were non-patient oriented and to items and services that were unnecessary to achieve the proper goal of providing adequate and appropriate care to the residents.

6. The failure to adequately budget and allocate resources to the facility directly caused damages to Ardelua Johnson

c. Corporate Compliance and Reporting

1. As administrators of Graceland Care Center-Oxford, Separate Defendants were responsible for ensuring that the facility complied with state and federal standards in providing care to the residents of the home. To that end, they were required to file various reports with regulatory entities.

2. As administrators, Separate Defendants were charged with the responsibility of reporting instances of **abuse** and neglect that occurred at the facility. Upon information and belief, Plaintiff alleges that their failure to properly and timely do so resulted in additional injuries to residents, including Ardelua Johnson

3. Upon information and belief, Plaintiff alleges that Separate Defendants failed to properly recognize and report instances of non-compliance occurring at Graceland Care Center-Oxford, and further failed to correct those instances. These failures to report resulted in the appearance of a facility that was properly managed and maintained. The false and misleading appearance induced the family of Ardelua Johnson to place him in the facility and misled them as to the care he would receive at the facility. Further, upon information and belief, Plaintiff alleges that because certain problems were not reported or were under-reported, the facility escaped inspections and investigations by regulatory agencies and even in-house reviews that might have corrected the deficiencies. These deficiencies that the facility experienced created a more dangerous environment in which additional injuries could occur to residents, including Ardelua Johnson

4. Separate Defendants were responsible for ensuring that no claims for reimbursement were submitted to the federal or state governments for services that were not provided or services provided that failed to meet required standards. Upon information and belief, Separate Defendants submitted false claims as a result of the various staffing issues listed above, resulting in unjust enrichment to the facility and a breach of Ardelua Johnson's admissions agreement.

5. The failure to adequately comply with and report violations of state and federal standards directly caused harm to Ardelua Johnson

52. A reasonably careful nursing home administrator would have foreseen that the failure to provide the ordinary care listed above would result in devastating injuries to Ardelua Johnson

53. WHEREFORE, based on such conduct of Separate Defendants as set forth above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Separate Defendants including, but not limited to, medical expenses, pain and suffering, mental anguish, disability, humiliation, disfigurement and death in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

***COUNT FOUR: NEGLIGENCE CLAIM AGAINST GRACELAND  
MANAGEMENT COMPANY, INC.; AND JOHN DOES 1 THROUGH 10***

54. The Plaintiff re-alleges and incorporates the allegations in paragraphs 1-49 as if fully set forth herein.

55. Defendants, Graceland Management Company, Inc.; John Does 1 through 10; and Unidentified Entities 1 through 10, individually and through their agents, servants, employees, consultants and contractors, owed a non-delegable duty to Ardelua Johnson, to exercise reasonable care in assessing, planning, monitoring and rendering care and services to Ardelua Johnson, consistent with the minimally acceptable standard of care for providing such services.

56. On all of the occasions complained of herein, Ardelua Johnson, was under the care, supervision, and treatment of the agents, servants, employees, contractors and consultants of Defendants Graceland Management Company, Inc.; John Does 1 through 10; and Unidentified Entities 1 through 10, and the injuries complained of herein were proximately caused by the acts and omissions of Defendants named herein.

57. Defendants Graceland Management Company, Inc.; and John Does 1 through 10; and Unidentified Entities 1 through 10 have vicarious liability for the acts and omissions of all persons or entities under Defendants' control, either directly or indirectly, including its employees, agents, servants, consultants, and independent contractors, whether in-house or outside entities, individuals, agencies, or pools causing or contributing to the injuries to and death of Ardelua Johnson

58. Defendants Graceland Management Company, Inc.; John Does 1 through 10; and Unidentified Entities 1 through 10 failed to meet the minimum standard of care and violated their duty of care to Ardelua Johnson, which is negligence. The negligence of Defendants, their agents, servants, employees, contractors and consultants, includes, but is not limited to the following acts and omissions:

- a) The failure to adequately and timely prevent, diagnose, and treat Ardelua Johnson's condition, including but not limited to decubitus wounds;
- b) The failure to develop, implement, and update an adequate and appropriate care plan to meet the needs of Ardelua Johnson;
- c) The failure to maintain appropriate records, including obvious failure to monitor and document significant changes in Ardelua Johnson's condition;
- d) The failure to provide sufficient numbers of qualified personnel, including nurses, licensed practical nurses, certified nurse assistants, and other personnel (hereinafter "nursing personnel") to meet the reasonable care needs of Ardelua Johnson;
- e) The failure to provide adequate supervision to the nursing staff so as to ensure that Ardelua Johnson, received adequate and sufficient nursing observation and examination of the responses, symptoms, and progress in the physical condition of Ardelua Johnson;

- f) The failure to adequately assess, evaluate, and supervise nursing personnel so as to ensure the Ardelua Johnson, received appropriate nursing care, in accordance with Defendants' policies and procedures, the statutorily mandated regulations implemented by the Mississippi Department of Health, and the legally imposed standards of care;
- g) The failure to provide and ensure an adequate nursing care plan based on the needs of Ardelua Johnson;
- h) The failure to implement and ensure that an adequate nursing care plan for Ardelua Johnson, was followed by nursing personnel;
- i) The failure to provide Ardelua Johnson, with adequate and appropriate observation and examination;
- j) The failure to provide care, treatment, and monitoring in accordance with physician's orders;
- k) The failure to properly and timely notify Ardelua Johnson's attending physician of significant changes in Ardelua Johnson's physical condition, including but not limited to decubitus wounds;
- l) The failure to ensure that Ardelua Johnson received adequate assessment of her needs;
- m) The failure to adequately and appropriately monitor Ardelua Johnson, and recognize significant changes in her health status; and
- n) The failure to respond to significant signs and symptoms of change in the condition of Ardelua Johnson

59. The acts and omissions identified above were negligent and below the minimally acceptable standard of care required to be exercised by the Defendants, their agents, servants, employees, consultants and contractors.

***COUNT FIVE: MEDICAL MALPRACTICE AGAINST SEPARATE DEFENDANTS  
GRACELAND CARE CENTER OF OXFORD LLC, GRACELAND MANAGEMENT  
COMPANY, INC., GRACELAND HOLDINGS LP, GRACELANDS INC., LAFAYETTE  
LTC, INC KATIE M. OVERSTREET QTIP TRUST, KATIE M. OVERSTREET TRUST***

60. Plaintiff hereby re-alleges and incorporates the allegations in paragraphs 1-58 as if fully set forth herein.

61. Separate Defendants owed a duty to residents, including Ardelua Johnson, to hire, train, and supervise employees so that such employees delivered care and services to residents in a safe and beneficial manner.

62. Separate Defendants' employees owed a duty to residents, including Ardelua Johnson, to render care and services as a reasonably prudent and similarly situated nursing home employee would render, including, but not limited to, rendering care and services in a safe and beneficial manner.

63. Separate Defendants owed a duty to assist all residents, including Ardelua Johnson, in attaining and maintaining the highest level of physical, mental, and psychosocial well-being.

64. Separate Defendants failed to meet the standard of care and violated their duty of care to Ardelua Johnson through mistreatment, **abuse** and neglect. The medical negligence of these Separate Defendants, their employees, and their consultants, includes, but is not limited to the following acts and omissions:

- a. The failure to properly assess Ardelua Johnson for the risk of malnutrition and weight loss;



- b. The failure to properly assess Ardelua Johnson for the risk of dehydration;
- c. The failure to provide proper wound care and to prescribe and administer proper medication to prevent Ardelua Johnson's existing medical conditions to worsen to the point of becoming life-threatening;
- d. The failure to properly assess Ardelua Johnson for the risk of development of pressure sores;
- e. The failure to develop, implement, and update an adequate and appropriate resident care plan to meet the needs of Ardelua Johnson;
- f. The failure to monitor and document significant changes in Ardelua Johnson's condition;
- g. The failure to provide and ensure an adequate nursing care plan based on the needs of Ardelua Johnson;
- h. The failure to provide and ensure adequate nursing care plan revisions and modifications as the needs of Ardelua Johnson changed;
- i. The failure to implement and ensure that an adequate nursing care plan for Ardelua Johnson was followed by nursing personnel;
- j. The failure to provide Ardelua Johnson with adequate and appropriate observation and examination following an injury so as to timely and adequately provide appropriate emergency medical care;
- k. The failure to provide care, treatment, and medication in accordance with physician's orders;
- l. The failure to properly and timely notify Ardelua Johnson's attending physician of significant changes in her physical condition, including, but not limited to multiple pressure sores; weight loss; surgical debridement of the coccyx; bi-lateral BKA; gangrene; multiple falls; **abuse** by another resident; anasarca; upper respiratory; malnutrition; dehydration; poorly controlled diabetes; poorly regulated Coumadin therapy; disfigurement and poor hygiene.
- m. The failure to adequately and appropriately monitor Ardelua Johnson and recognize significant changes in her health status; and
- n. The failure to respond to significant signs and symptoms of change in the condition of Ardelua Johnson

65. A reasonably prudent nursing home operating under the same or similar conditions, would not have failed to provide the care listed in the above paragraph. Each of the foregoing acts of medical negligence on the part of Separate Defendants was a proximate cause of Ardelua Johnson's injuries. Ardelua Johnson's injuries were foreseeable to these Separate Defendants.

66. Separate Defendants' conduct in breaching the duties owed to Ardelua Johnson was grossly negligent, willful, wanton, malicious and reckless.

67. As a direct and proximate result of such grossly negligent, willful, wanton, reckless and malicious conduct, Ardelua Johnson suffered injuries and also suffered extreme pain, suffering, and mental anguish, all of which required medical treatment. As a result, Ms. Johnson incurred significant medical expenses.

68. WHEREFORE, based on the conduct set forth above of Separate Defendants, Plaintiff asserts a claim for judgment for compensatory and punitive damages against these Defendants including, but not limited to, medical expenses, physical pain

and suffering, mental anguish, disability, humiliation, disfigurement and death in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

***COUNT SIX: MALICE, AND/OR GROSS NEGLIGENCE WHICH EVIDENCES A WILLFUL, WANTON, OR RECKLESS DISREGARD FOR THE SAFETY OF ARDELUA JOHNSON AGAINST ALL DEFENDANTS***

69. Plaintiff re-alleges and incorporates the allegations in paragraphs 1-67 as if fully set forth herein.

70. The longevity, scope and severity of all of the Defendants' failures and actions constitute malice, and/or gross negligence that evidences a willful, wanton or reckless disregard for the safety of others, including Ardelua Johnson Specifically, such conduct was undertaken by all Defendants without regard to the health and safety consequences to those residents, such as Ardelua Johnson, entrusted to their care. Moreover, such conduct evidences little regard for their duties of care, good faith, and fidelity owed to Ms. Johnson.

71. The malice, and/or gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Ardelua Johnson, includes, but is not limited to, one or more of the following acts and omissions as alleged in Paragraphs 30, 40, 57 and 63.

72. As a direct and proximate result of the above cited malice, and/or gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Ardelua Johnson, he suffered injuries as set forth herein, all of which required Ms. Johnson to incur significant medical expenses.

73. WHEREFORE, based on such conduct of all Defendants, Plaintiff asserts a claim for judgment for compensatory and punitive damages against all Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, and humiliation, disfigurement and death in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

***COUNT SEVEN: FRAUD AGAINST ALL DEFENDANTS***

74. Plaintiff re-alleges and incorporates the allegations in paragraph 1-72 as if fully set forth herein.

75. Defendants intentionally engaged in common law fraud, which was a proximate cause of the injuries and damages described herein. Defendants, while claiming or implying special knowledge, concealed and/or misrepresented material facts to Ardelua Johnson and her family beginning with her admission on September 1, 2001, and continuing throughout Ms. Johnson's residency at Graceland Care Center-Oxford. Defendants either personally, or through their agents or employees, specifically misrepresented that they could and would provide twenty-four hour a day nursing care and supervision to Ardelua Johnson during her residency at Graceland Care Center-Oxford.

76. Defendants made these misrepresentations with the knowledge that they would not and/or could not provide twenty-four hour a day nursing care and supervision to Ardelua Johnson during her residency at Graceland Care Center-Oxford because they were not sufficiently staffed or supplied.

77. The relationship between Defendants and Ardelua Johnson and her family was one of trust and confidence, thereby imparting upon Defendants a higher duty to affirmatively speak the truth and to disclose adverse facts to Ardelua Johnson and her family because of Ms. Johnson's age and infirmities and the surrounding circumstances. Defendants' fraudulent conduct includes, but is not limited to, the conduct described above and set forth below.

78. Defendants knowingly concealed or failed to disclose material facts, even though Defendants knew, or reasonably should have known, because of the surrounding circumstances that Ardelua Johnson and her family were ignorant of these material facts and did not have an equal opportunity to discover the truth. Specifically, Defendants either personally or through their agents or employees misrepresented the material facts either by omission or affirmative statements that they were willing to, and would, provide the proper care, treatment and services to Ardelua Johnson, even though Defendants knew that they would provide as little care, treatment and services as possible in order to maximize Defendants' profits at the expense of Ms. Johnson.

79. Further, Defendants made the misrepresentations with the intent to induce Ardelua Johnson and her family to take some action: specifically, to admit and not remove Ms. Johnson from Defendants' facility, by concealing or failing to disclose the material facts that there was an epidemic of resident harm and injury, as well as a practice of utilizing insufficient numbers of nursing aides who were not qualified to render care or services in accordance with the law during Ms. Johnson's residency from 2002 until the date of Ms. Johnson's death. As a proximate cause of all Defendants' concealment and failure to disclose, these adverse material facts, Ardelua Johnson suffered injuries as set forth herein.

80. Ardelua Johnson and her family detrimentally relied on Defendants' misrepresentations.

81. Defendants' material misrepresentations beginning in 2001 and continuing through her death on July 16, 2004, were made with knowledge of their falsity and with the intention that such misrepresentations should be relied upon by Ardelua Johnson and her family to Ms. Johnson's detriment. As a consequence and proximate cause of the reasonable and detrimental reliance by Ardelua Johnson and her family on these misrepresentations of commission and omission, Ms. Johnson and her family suffered injury.

82. As a result of Defendants' misrepresentation, Defendants obtained an agreement with Ardelua Johnson, or on behalf of, Ardelua Johnson and/or her family, in 2002, wherein Defendants promised to provide basic care for Ms. Johnson. As partial consideration for their promise, Ardelua Johnson and/or her family agreed to turn over virtually all of her income to these Defendants on a monthly basis. At the time of their agreement, it was known and understood by all parties that Defendants, for good and sufficient consideration, had also entered into agreements with the State of Mississippi and other relevant licensing and regulatory authorities that were designed and intended to be for the benefit and protection of Ardelua Johnson and others who were similarly situated. By virtue of these agreements and by direct statement beginning on April 30, 2004, and continuing until her death on April 1, 2005, Defendants either personally or through their agents or employees represented to Ardelua Johnson and her family that the care Defendants would provide for Ms. Johnson would fully comply with the licensing requirements and standards of care specified by the laws and regulations of the State of Mississippi and other relevant licensing and regulatory authorities.

83. At all times relevant to their proceeding, Defendants held themselves out to Plaintiff and the public at large to be a nursing home licensed by the State of Mississippi and certified to provide care to nursing home residents. At all times material to their lawsuit, the aforesaid agreements, obligations and promises, which were a part thereof, were renewed on a monthly basis by virtue of payment made by, or on behalf of, Ardelua Johnson, to Defendants for care to be rendered for the upcoming month. Defendants were paid each month in advance of care to be provided pursuant to the admission agreement and promises which were a part thereof, including but not limited to the resident's bill of rights.

84. WHEREFORE, based on such conduct of the Defendants as set out above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, disfigurement and death in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

***COUNT EIGHT: BREACH OF FIDUCIARY DUTY AGAINST ALL DEFENDANTS***

85. Plaintiff re-alleges and incorporates the allegations in paragraph 1-80 as if fully set forth herein.

86. Because of her mental and physical infirmities, Ardelua Johnson was particularly dependent upon Defendants, their employees and agents for her daily care and well-being. Because of the nature of their dependency, the representations of Defendants that they could and would provide necessary care and the dominant influence Defendants exerted over Ardelua Johnson on a daily basis while he resided at Graceland Care Center-Oxford, Ms. Johnson and her family held in Defendants a special confidence and trust. Defendants accepted their special confidence and trust by admitting Ardelua Johnson to their facility and by determining the level of care to be provided to Ms. Johnson.

87. Ardelua Johnson and her family relied upon Defendants' superior knowledge, skill, and abilities, which they held themselves out to possess. Ardelua Johnson and her family also relied on the Defendants to provide care for Ardelua Johnson who, because of her age and infirmities, was not able to care for herself.

88. By virtue of the nature of the services Defendants provided to Ardelua Johnson, the special relationship that existed between Defendants and Ms. Johnson, the exertion of influence Defendants had over Ms. Johnson, the huge disparity of power and unequal bargaining position existing between Defendants and Ms. Johnson, as well as all of the other surrounding circumstances including but not limited to Ardelua Johnson's mental and physical infirmities, Defendants occupied a position of trust and confidence toward Ms. Johnson that required among other things fidelity, loyalty, good faith, and fair dealing by the Defendants.

89. By accepting payment for services and care that was not provided to Ardelua Johnson, and concealing and failing to disclose their **abuse** and neglect of Ms. Johnson, Defendants breached their confidential and fiduciary duties, namely, the duties of good faith and fair dealing, to Ms. Johnson by failing to provide the appropriate level of care and services to which he was entitled.

90. As a proximate cause of the foregoing breaches of duty by all of the Defendants, Ardelua Johnson suffered injuries as set forth herein.

91. WHEREFORE, based on such conduct of all of the Defendants as set out above, Plaintiff asserts a claim for judgment for compensatory and punitive damages against all Defendants including, but not limited to, medical expenses, physical pain and suffering, mental anguish, disability, humiliation, disfigurement and death in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law. Plaintiff also seeks the imposition of a constructive trust on all wrongful profits and proceeds arising out of Defendants' breach of fiduciary duty to Ardelua Johnson

#### ***COUNT NINE: STATUTORY SURVIVAL CLAIM AGAINST ALL DEFENDANTS***

92. Plaintiff re-alleges and incorporates the allegations in paragraph 1-87 as if fully set forth herein.

93. As a direct and proximate result of the negligence, malice, and/or gross negligence that evidenced a willful, wanton or reckless disregard for the safety of others, including Ardelua Johnson, Ms. Johnson suffered injuries as set forth herein, all of which caused physical pain and suffering, mental anguish, humiliation and emotional distress. As a result, Ardelua Johnson incurred significant hospital and medical expenses.

94. WHEREFORE, based on and arising out of the conduct of all Defendants as set out above, Plaintiff asserts a claim for judgment for compensatory and punitive damages for Ardelua Johnson's injuries, including, but not limited to medical expenses, physical pain and suffering, mental anguish, disability, humiliation, and disfigurement as a result of the wrongful acts and omissions of all Defendants, heretofore described, all in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

#### ***COUNT TEN: STATUTORY WRONGFUL DEATH CLAIM AGAINST ALL DEFENDANTS***

95. Plaintiff re-alleges and incorporates the allegations in paragraph 1-90 as if fully set forth herein.

96. As a direct and proximate result of the negligence, malice, and/or gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, including Ardelua Johnson, Defendants caused the death of Ardelua Johnson

97. As a direct, natural and proximate result of the negligence, malice, and/or gross negligence which evidences a willful, wanton or reckless disregard for the safety of others, Ardelua Johnson died on July 16, 2004, thereby incurring funeral, burial and other related expenses.

98. As a result of the death of Ardelua Johnson, the wrongful death beneficiaries suffered loss of consortium, attention, guidance, care, protection, training, companionship, compassion, affection, and love.

99. WHEREFORE, based on such conduct of Defendants as set out above, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Defendants including but not limited to Ardelua Johnson's physical pain and suffering, mental anguish, disfigurement, and death in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law. Additionally, based on such conduct, Plaintiff asserts a claim for judgment for all compensatory and punitive damages against Defendants based on the damages sustained by the wrongful death beneficiaries as a result of the loss of a personal relationship with Ardelua Johnson, including but not limited to loss of support, companionship, consortium, attention, guidance, care, protection, training, compassion, affection, and love, in an amount to be determined by the jury, plus costs and all other relief to which Plaintiff is entitled by law.

#### ***PRAYER FOR RELIEF***

Pursuant to the Mississippi Rules of Civil Procedure, Plaintiff demands that all issues of fact in their case be tried to a jury.

WHEREFORE, Allie Shaw, as Executrix of the Estate of Ardelua Johnson, and for her cause of action, prays for judgment against all Defendants, as follows:

1. For damages to be determined by the jury, in an amount exceeding the minimum jurisdictional amount of their Court, and adequate to compensate Plaintiff for all the injuries and damage sustained;
2. For all general and special damages caused by the alleged conduct of Defendants;
3. For the costs of litigating their case;
4. For punitive damages sufficient to punish Defendants for their egregious conduct and to deter all Defendants from repeating such atrocities; and
5. For all other relief to which Plaintiff is entitled by Mississippi law.

Respectfully submitted,

The Estate of Ardelua Johnson, by and through Allie Shaw, Individually and as Executrix of the Estate of Ardelua Johnson.  
and for the use and benefit of the wrongful death beneficiaries of Ardelua Johnson,

<<signature>>

D. Bryant Chaffin

Mississippi Bar No. 100379

WILKES & McHUGH, P.A.

P. O. Box 17107

Hattiesburg, MS 39404

Telephone: 601-545-7363

Facsimile: 601-545-7364

Attorneys for Plaintiff

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